IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7098 OF 2005

Smt. Mangal Anil Gaikwad,)
Age : 40 years, Occ: Nil,)
Kamgar Chawl, Khanjire Mala,)
Ichalkaranji, Taluka : Hatkangale,)
District - Kolhapur.).. Petitioner

Vs.

1. The State of Maharashtra,)
Through the Secretary,)
Department of Urban Development,)
Mantralaya, Bombay - 32.)

2. The Director,)
Directorate of Municipal)
Administration, Government)
Transport Service Building,)
3rd Floor, Sir Pochkhanwala Road,)
Worli, Mumbai - 30.)

3. The District Collector,)
Kolhapur, District - Kolhapur.)

4. Municipal Council of Ichalkaranji)
through Chief Officer,)
Ichalkaranji,)
Taluka : Hatkalangale,)
District : Kolhapur.).. Respondents

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Shri Amit Sale for the petitioner.

Shri C.R.Sonawane, AGP for the respondent Nos.1 to 3.

Shri T.S.Ingale for the respondent No.4.

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CORAM : R.M.S.KHANDEPARKAR &

NARESH H.PATIL, JJ

DATED : 29TH AUGUST, 2006

ORAL JUDGMENT: (Per R.M.S.KHANDEPARKAR, J)

1. Heard the learned advocate for the petitioner, and the learned AGP for the respondent Nos.1 to 3 as well as the learned advocate for the respondent No.4.

2. By an order dated 15th June, 2006, the notice was issued to the respondents for final disposal of the matter at the admission stage. Till this date, none of the respondents have filed any reply to the petition though, time and again, at the request of the respondents, sufficient time was granted to file the affidavit-in-reply.

3. The grievance of the petitioner is that the husband, who was employed with the respondent No.4 initially as the Watchman and thereafter as a Sweeper, expired on 16th August, 2004 while he was in service. Consequently, in terms of the G.R.dated 26th October, 1994, the petitioner made representation to the respondent No.4 for her employment on compassionate ground. The respondent No.4 in the resolution dated 31st December, 2004 resolved for employment of the petitioner on compassionate ground, consequent to the death of her husband as Sweeper in the scale of

Rs.2550-3200 with necessary sanction of the Collector, and accordingly forwarded the proposal in that regard to the respondent No.3. The respondent No.3, however, did not grant the approval on the pretext that reorganisation of the staffing pattern was under consideration. According to the petitioner, even after finalisation of the staffing pattern, on request, the respondent No.3 has not granted approval for employment of the petitioner as Sweeper with the respondent No.4. Hence the present petition.

4. The learned advocate appearing for the petitioner submitted that even though the G.R.dated 26th October, 1994 clearly guarantees employment to one of the family members of the deceased employee, and the petitioner having made proper representation on the death of her husband, and inspite of the fact that the respondent No.4 is willing to employ the petitioner as Sweeper in the place of her deceased husband, the other respondents without any justification and lawful reason have neglected to grant approval for such appointment.

5. The learned AGP for the respondent Nos.1 to 3 tried to contend that the power to create post vests in the respondent No.2 and the respondent No.4 did not

approach the respondent No.2 in that regard, and therefore, there was no sanction granted by the respondent No.2. As regards the respondent No.3 is concerned, the learned AGP fairly conceded that inspite of his best efforts, he has not been able to get any instructions from the respondent No.3. He also produced a copy of the letter addressed to the District Collector, Kolhapur, on 8th August, 2006 for our perusal and submitted that inspite of the said letter being sent he has not received any communication from the District Collector of Kolhapur.

6. As already observed above, the notice was issued on 15th June, 2006 for final disposal of the matter considering the nature of the grievance of the petitioner and the urgency involved in the matter. The records which are placed on record along with the petition apparently disclose a G.R.dated 26th October, 1994 which reveals that the family members of the government servants are entitled for employment on compassionate ground in case of death of government employee while in service. It is also not in dispute that the provisions of law which are applicable to the government employees also apply to the Municipal Council. Nothing is brought to our notice which could disclose that the provisions of the G.R. dated 26th

October, 1994 would not apply to the employees of the Council or that the employees of the Council are excluded from the applicability of the provisions of the said G.R. Undisputedly, the appointment of the employees in the Council is to be made on sanction being granted by the respondent No.3. The entry in the employment therefore with the Municipal Council is directly under the control of the Government.

7. As, inspite of the notice to the respondent No.3, he having failed to disclose any sufficient cause for refusal to grant sanction to the employment of the petitioner with the Municipal Council of Ichalkaranji, the respondent No.4, as the Sweeper, and that too inspite of the resolution in that regard having been passed by the respondent No.4 and in the face of the said G.R.dated 26th October, 1994 which discloses right in favour of the petitioner to claim such employment on compassionate ground and the sanctioning authority in that regard being the respondent No.3, we are left with no alternative than to grant relief asked for and direct the respondent No.3 to pass an appropriate order in that regard within a period of four months from the date of receipt of the writ of this Court.

8. As already observed above, there is absolutely total failure on the part of the respondent No.3 in rendering necessary assistance to the Court to dispose of the matter as expeditiously as possible. There is also neglect on the part of the respondent No.3 in rendering necessary assistance to the government advocate in the matter in hand and that too inspite of the specific communication by the learned AGP to the respondent No.3 regarding the present matter. In the circumstances, it is also necessary to impose costs upon the incumbent/s of the respondent No.3 who is/are responsible for failure to perform his/their duties under the provisions of law in relation to the claim of the petitioner duly approved by the respondent No.4 and further neglect in performance of his/their duties to render necessary assistance to the Court as well as to the learned AGP in the matter. The Chief Secretary of the Government of Maharashtra by himself or through any officer to be appointed by him to inquire into the matter in order to fix responsibility in that regard and to identify the incumbent/s of the respondent No.3’s office in this matter and to recover the costs from him/them. The necessary inquiry in that regard should be held within a period of four months and the costs shall be recovered within two months thereafter from the incumbent/s held responsible for the same.

9. The petition accordingly is disposed of with the direction to the respondent No.3 to do the needful as directed above in relation to the claim of the petitioner for employment on compassionate ground and as approved by the respondent No.4 within a period of four months from the date of receipt of the writ from this Court and shall pay costs of Rs.5,000/-. The amount of costs shall be recovered from the respondent No.3, as stated above. The petition is disposed of in above terms.

(R.M.S.KHANDEPARKAR, J)

(NARESH H. PATIL, J)